122-636

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. ~~1208~~. 823 498

THURBER, WHYLAND AND COMPANY, APPELLANT,

vs.

A. W. WOODWARD AND A. W. LANGDON.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA.

FILED FEBRUARY 20, 1885.

SUPREME COURT OF THE UNITED STATES.

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vs.

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1 Pleas in the circuit court of the United States for the southern district of Iowa, central division, at the term thereof begun and holden at the United States court-house in the city of Des Moines, in said district, on the 21st day of October, 1884, before Hon. J. M. Love and Hon. O. P. Shiras, judges.

2 Be it remembered that heretofore, to wit, on the 31st day of October, 1884, there was filed in the clerk's office of the United States circuit court of the southern district of Iowa, central division, a transcript of record from the district court of Marshall county, in the State of Iowa, in a certain cause wherein A. W. Woodward and others were complainants, and the Marshall Canning Company and others were defendants, which said transcript of record is in the words and figures following, to wit:

3 *Petition in Equity.*

In the District Court of the State of Iowa, in and for Marshall County. December Term, 1884.

A. W. WOODWARD & A. W. LANGDON
vs.
MARSHALL CANNING CO., THURBER WHYLAND & CO., H. C. YOUNG, A. T. BURCHARD, WM. J. MORRISON.

Par. 1. The plaintiffs state that the defendant, the Marshall Canning Co., is a corporation for pecuniary profit, duly organized under the laws of the State of Iowa, "for the purpose of raising, or procuring to be raised, preparing, canning, and packing for market, corn, tomatoes, and any other vegetables and fruits which may, in the discretion of the proper officers, be desirable to prepare and market, etc.," with its buildings and principal place of business at Marshalltown, Iowa.

That the authorized capital stock of said company is $50,000.00, and the capital stock subscribed and actually paid in is the sum of $24,500.00, of which H. C. Young, of Marshalltown, Iowa,
4 owns $8,500.00; A. T. Birchard, of the same place, $5,000.00; plaintiff, A. W. Langdon, $8,500.00, and A. W. Woodward, of Chicago, Ill., $2,500.00.

That the directors of said company are A. W. Langdon, H. C. Young, and A. T. Birchard, and its officers are H. C. Young, president, and A. T. Birchard, secretary and treasurer. That the assets of said company are as follows:

The real estate, particularly described in copy of mortgage hereto annexed as Exhibit "A," containing about seventeen and $\frac{48}{100}$ acres of land, upon which are erected large and commodious buildings, with a capacity of putting up — cases of goods during a season, said real estate being of the actual value of $13,240.50; a large amount of machinery and apparatus for carrying on said canning business, of the value of $5,675.00, making the total value of said real estate and machinery the sum of $18,915.00.

The said company has also on hand merchandize *on hand*, being goods of its own packing, in amount and value as follows, viz:

12,215	cases of corn, @ 1.50		18,322 50
12,935	" " tomatoes, @ 1.50		19,402 50
303	cases of succotash, @ 2.00		606 00
5 473	cases of beans, @ 1.30		617 90
	Total merchandize		$38,948 90

This making the total assets of said company, in real estate, machinery, and merchandize, the sum of $57,863.90.

Par. 2. The liabilities of said company are substantially as follows:

To N. Lucas estate (or to his widow)	$8,000 00
" Mrs. E. C. Webster	1,000 00
" Thumber, Whyland & Co.	16,252 00
" " " " bal. on $25,000.00	3,438 97
Notes given to J. K. Armsby & Co., and transferred to others	36,005 00
Bills for tin cans	3,499 00
Bills for sundries, coal, &c.	5,200 00
For corn-cutting machines	500 00
To First National Bank, Marshalltown	2,000 00
Total liabilities	$75,894 97

Par. 3. Plaintiffs further say that article 3 of the articles of incorporation of said company is as follows:

"The highest amount of indebtedness at any one time shall not exceed in amount two-thirds of its capital stock."

It is also provided by the general incorporation laws of the State of Iowa, that in no case shall the indebtedness of a
6 corporation like said Canning Company exceed two-thirds of its capital stock.

Article 14 of the articles of incorporation of said company is as follows:

"It shall be competent to mortgage the property of the company to an amount not exceeding one-half of the capital stock actually paid in, but a majority of the stockholders, by shares, must first vote in favor thereof at a regular or special meeting."

Par. 4. The plaintiffs further aver, that on the 28 day of July, A. D. 1884, when the actual indebtedness of said company was at least $45,000.00, $26,000.00 of which was secured by mortgage on the personal property and real estate then owned by the defendant, Canning Company, and without any vote of the stockholders of said company, and without any authority from said stockholders or board of directors, the defendant, H. C. Young, gave or pretended to give to the defendant, Thurber, Whyland & Co., a copartnership, doing a wholesale grocery business in New York city, a promissory note of $25,000.00, due in six months after date, and bearing eight per

cent. interest, and secured, or pretending to secure it, by
7 both real estate and chattel mortgage on all the real and personal property of said Canning Company, said note being given to said firm to secure it for money which it proposed to loan to said canning company, with which to put up the pack of 1884. Copies of said mortgages are hereto annexed, the real estate one being marked "A," and the chattel, "B."

That said firm of Thurber, Whyland & Co. has advanced under said $25,000.00 and under a written contract to advance money to carry on said canning business the sum of $———, all of which has been actually paid back to said firm by said company in canned goods at market prices, except the said sum of $3,438$\frac{97}{100}$ mention-in the list of liabilities of said company hereinbefore set forth, which sum, with interest thereon, as provided *as provided* in said note and contract, these plaintiffs ask the court to fully pay to said firm out of the canned goods of said company now on hand, and fully repay said firm for all money actually advanced as aforesaid.

8 Par. 5. Plaintiffs further show unto the court that at the date of the execution of the note and mortgage mentioned in the preceding paragraph, without vote of the stockholders of said company, and while the indebtedness of the company exceeded its entire capital stock, and without any power or authority, H. C. Young executed and delivered to said firm of Thurber, Whyland & Co. another note of $16,252.00, and secured, or pretended to secure, the same by the two mortgages above referred to as Exhibits A & B.

That for the said $16,252.00 note thus given said Canning Company received no consideration whatever, other, different, or more that was and has been advanced under said $25,000.00 note and loan agreement as hereinbefore set forth.

That a worthless account and claim against J. K. Armsby & Co., an insolvent grocery firm in Chicago, Illinois, was ostensibly made the consideration for said note, but, in fact, said account is of no value whatever; that the pretended object for which said note was given is wholly without the scope of the corporate business of said company, and said note is absolutely null and void.

9 Par. 6. That before the giving of said note and mortgage it was corruptly, usuri*a*lly, and unlawfully agreed between said H. C. Young and said Thurber, Wyland & Co. that if said Thurber, Wyland and Co. would advance the money to can and pack the crop of 1884 that all money advanced for that purpose should be repaid to them, with interest at eight per cent., and that said company, acting through said H. C. Young, president, would give said note of $16,252.00 and secure the same with said mortgages as a bonus for said loans and advances, and said $16,252.00 is in fact wholly usurious and void, the assignment of said account being only a cover for usury.

Par. 7. Plaintiffs further say that at or near the time of the execution of said $16,252.00 note the said H. C. Young, claiming to act for said Canning Company, entered into a written contract with said Thurber, Wyland & Co. to turn over to them all the property and goods of said Canning Company as a trustee, to pay themselves out of the goods

of said company all the money the firm had advanced and
10 the $16,252.00 note aforesaid, a copy of which contract is hereto annexed, marked "C," and made a part hereof.

That under the terms and conditions of said contract said Thurber, Wyland & Co., through their agent, Wm. J. Morrison, a defendant herein, have taken possession of the buildings and personal property of said company, and claim to be holding said property as a trustee to pay themselves for money advanced and for $16,252.00, not any of which has ever been paid to said company.

But these plaintiffs charge the fact to be that neither said H. C. Young or the company itself, by vote, ever had or have authority to place said property in the hands of a trustee, and said contract is absolutely null and void, and beyond the corporate power of the company, its board of directors or officers.

Par. 8. Plaintiffs also say that they had no knowledge that said $16,252.00 note and said contract of trusteeship had been executed and given by said Canning Company or its president till just before the commencement of this suit, and in no manner consented to the giving of said note and contract or authorized the giving thereof.

That the giving of said note and contract is entirely outside
11 the business scope of said corporation, were given when the indebtedness exceeded $\frac{3}{4}$ of the capital stock of said company and when the property of the company was mortgaged for more than half its value, and were never authorized by vote of the stockholders of said company.

Par. 9. That the said defendant Thurber, Wyland & Co., through their said agent William J. Morrison, are now in possession of all of the canned goods belonging to said Canning Company under said contract of trusteeship, and are rapidly billing and shipping out said goods with the purpose and intent of paying out of said goods said $16,252.00 note, to the great prejudice of these plaintiffs, said Canning Company, and the other creditors of said company, and will thus ship and apply said goods unless restrained by legal proceedings. That these plaintiffs will be damaged thereby in the sum of $8,000.00, for which they have no adequate remedy at law, and hence bring this action in equity. The said Thurber, Wyland & Co. will also,

as these plaintiffs verily believe, seize said goods under said
12 chattel mortgage and sell, or attempt to sell, the same under the power of sale in said mortgage contained unless enjoined from so doing.

Par. 10. These plaintiffs also ask that the account against J. K. Armsby & Co., by Thurber, Wyland & Co., assigned to said Canning Company, be reassigned to them, be returned to them, and that said Thurber, Wyland & Co. be placed *in statu quo*. Wherefore plaintiffs ask that said promissory note of $16,252.00 be annulled and cancelled, and that said mortgage, so far as they secure said note, also be set aside and cancelled of record; that the said defendant-, Thurber, Wyland & Co., be restrained and enjoined from further shipping, handling, or in any manner disposing of said canned goods by themselves or agent or agents, or from retaining or holding possession thereof, and from seizing and selling said goods under said chattel mort-

gage, or selling, assigning, or transferring said mortgage and the $16,252.00 therein described; that said Canning Company and its president, H. C. Young, and other officers, be restrained and enjoined from
(from) further incumbering the property of said canning
13 company; that said contract of trusteeship be cancelled and set aside; that out of the proceeds of said goods the legal and just debts of said Canning Company be first paid, and out of the residue a dividend be made to the stockholders of said company, and that judgment be rendered therefor; that a temporary writ of injunction be issued in this cause to restrain the defendants as herein prayed, and that the same be made perpetual on final hearing; that a receiver be appointed to take possession of said building and property, subject to the order of court, till the final hearing, and preserve or sell the same and keep the proceeds, as may be for the best interest of the parties litigant, and that plaintiffs have such other and further relief as may be just and equitable in the premises, and for costs of suit.

(Signed) CASWELL & MEEKER,
Att'ys for Plaintiffs.

STATE OF NEW YORK, *Erie County:*

I, A. W. Langdon, on oath, say I am one of the plaintiffs in the above-entitled suit; that I have heard the foregoing petition
14 read, know its contents, and the allegations therein made are true, as I verily believe.

(Signed) A. W. LANGDON.

Subscribed and sworn to before me, and in my presence, by A. W. Langdon, this 13th day of October, 1884.

[SEAL.] (Signed) FRANK T. MOULTON,
Notary Public.

Endorsed: A. W. Woodward, A. W. Langdon *vs.* The Marshall Canning Company *et al.* Petition in equity. Filed Oct. 18th, 1884. (Signed) S. R. McLeran, clerk.

15 EXHIBIT "A."

Mortgage.

This indenture, made the 28th day of July, A. D. 1884, between the Marshall Canning Company, of Marshall county and State of Iowa, of the first part, and Thurber, Whyland & Co., of New York county and State of New York, of the second part, witnesseth, that the said part— of the first part, for and in consideration of the sum of forty-one thousand two hundred fifty-one $\frac{59}{100}$ dollars, the receipt of which is acknowledged, do, by these presents, grant, bargain, sell, and convey unto the said party of the second part, its heirs and assigns, forever, the following-described real estate, lying and being situated in the county of Marshall and State of Iowa, to wit: Beginning at a point one hundred and five (105) rods twelve and $\frac{4}{100}$ (12.04) links south, and ten (10) rods and $\frac{4}{100}$ (.04) links east, of the

northwest corner of the east half of the northwest quarter of section thirty-six (36), in tp. N. Y., R. 18, being at south line of track sold M. Healion, running thence east on south line of some thirty-five (35) rods and nine and $\frac{1}{2}$ ($9\frac{1}{2}$) links to center of Lime creek; thence following said creek northeasterly to east line of the northwest
16 quarter of said section; thence south sixty-six (66) rods and twenty-two links to north line of public highway; thence north ($81\frac{1}{2}^\circ$ west) on north line of highway seventy (70) rods and one link to east line of Binford & Webster's addition; thence north twenty-three (23) rods eighteen and $\frac{1}{5}$ ($18\frac{1}{5}$) links to beginning, containing $16\frac{2}{100}$ acres, being lot 4 of subdivision of N. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ and all of lot two (2) of subdivision of S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ of said section 36, not heretofore conveyed by said first party; also out-lot C of Binford & Webster's addition to Marshall; also the tract beginning at the northwest corner of out-lot C aforesaid and running north sixty-six (66) feet to southwest corner of that part of out-lot B of said addition conveyed by said Webster to said Healion; thence east $164\frac{1}{6}$ feet to east line of said out-lot B; thence south sixty-six (66) feet to northeast corner of said out-lot C; thence west one hundred and sixty-five (165) feet to beginning, containing in east track and said out-lot C 1.45 acres.

To have and to hold the premises above described, with all the appurtenances thereto belonging, unto the said party of the
17 second part and to its heirs and assigns forever, the said party of the first part hereby covenanting that the above-described premises are free from any incumbrance, except six thousand dollars held by S. R. Lucas, and it will warrant and defend the title unto the said party of the second part, its heirs and assigns, against all persons whomsoever claiming the same: Provided always, and these presents are upon this express condition, that if the said Marshall Canning Company, its heirs, executors, or administrators, shall pay, or cause to be paid, to the said Thurber, Wyland & Co., its executors, administrators, or assigns, the sum of sixteen thousand two hundred fifty-one $\frac{59}{100}$ dollars on 28th day of January, 1885; twenty-five thousand dollars on 28th day of January, 1885, with interest at the rate of eight per cent. per annum, payable annually, all interest to bear eight per cent. interest, after maturity, from year to year, until paid, according to the tenor and effect of the two promissory notes of the said Marshall Canning Company, payable to the order of Thurber, Wyland & Co. after date, and bearing even date herewith, then these presents to be
18 void; otherwise to remain in full force.

And it is further agreed that if default shall be made in the payment of said sums of money, or any part thereof, principal or interest, or if the taxes assessed on the above-described real estate shall remain unpaid for the space of three months after the same are due and payable then the whole indebtedness shall become due, and then the party of the second part, heirs and assigns, may proceed by foreclosure or in any other lawful mode to make the amount of said note, together with all interests and costs, and all taxes and assessments accrued on said real estate together with a reasonable

fee for plaintiff's attorneys out of said real estate. The $25,000.00 note above referred to is given to secure the mortgage herein for short time loans and advance of money to mortgagor, as shown by contract on back thereof.

In testimony whereof, the said party of the first part has hereunto set its hand and seal the day and year first above written.

MARSHALL CANNING CO.,
By H C. YOUNG, *President.*

19 STATE OF IOWA, } ss:
Marshall County, }

Be it remembered that on the 28th day of July, A. D. 1884, before me, the undersigned, a notary public in and for said county, came Henry C. Young, as president of the Marshall Canning Company of Marshalltown, to me personally known to be the identical persons whose name subscribed to the foregoing deed as president of said company, grantor, and acknowledged the instrument to be the voluntary act and deed of said company, and that —— executed the same for the purpose therein mentioned and seal of said company as offered.

Witness my hand and notorial seal, the day and year last above written.

[s. s.] J. F. MEEKER,
Notary Public.

20 STATE OF IOWA, *Marshall County:*

Be it remembered that on this 28th day of July, A. D. 1884, before me, T. Burford, a notary public in and for said county, came Henry C. Young, the president of the Marshall Canning Company of Marshalltown, Iowa, to me personally known to be the identical person whose name is affixed to this mortgage as the president of the grantor, the corporation herein mentioned, and who by me being duly sworn, deposes and says: That he resides in Marshalltown aforesaid, in said county; that he is the president of the Marshall Canning Company; that the seal affixed to the within indenture is the corporate seal of said Marshall Canning Company, and was affixed to the within indenture by order of said directors for the uses therein expressed, and that he did, by like order, *did* subscribe his name thereto as president of the Marshall Canning Company, and that said instrument is his own, true, and voluntary act and deed as well as that of the Marshall Canning Co.

J. F. MEEKER,
Notary Public, Marshall Co., Iowa.

21 STATE OF IOWA, } ss:
Marshall County, }

I, L. A. Jenning, county recorder in and for said county, do hereby certify that the within is a true and correct copy of the real estate mortgage from the Marshall Canning Co. to Thurber, Whyland &

Co., dated July 28, 1884, and found recorder in real estate mortgage record, vol. 128, page 341, as the same appears in my——

Endorsed: Mortgage. The Marshall Canning Company to Thurber, Whyland & Co. State of Iowa, Marshall county, *ss.* Filed for record this 5th day of August, A. D. 1884, at 2.45 o'clock p. m., and recorded in book 128, page 341. L. H. Jennings, recorder of Marshall Co., by G. D. Vites, deputy.

22 EXHIBIT "B."

Chattel Mortgage.

Know all men by these presents, that I, Marshall Canning Company, of the county of Marshall and State of Iowa, in consideration of the sum of forty-one thousand two hundred and fifty-one $\frac{59}{100}$ dollars to me in hand paid by Thurber, Whyland & Co., of New York city, party of the second part, the receipt whereof is hereby acknowledged, have bargained and sold, and do by these presents grant and convey unto the said party of the second part, his heirs, assigns, etc., the following goods and chattels, to wit: Nine cutting machines, two tin cutting machines, two Merrill & Soule's patent corn cookers, six retorts and fixtures, two boilers, (60 horse-power engine,) one fifteen horse-power engine, all belting, shafting, pulleys, tools, utensils, and implements of every kind and character, movable and immovable, all tin cans, tin plate, boxes, box stock, box lumber, tables, all material manufactured, unmanufactured, or in process of manufacture. All of said goods, chattels, and property being in or on the building and premises known as the factory and grounds of the Marshall Canning Co., in Marshalltown, Marshall county, Iowa. Also all canned goods and tin cans which may be hereafter manufactured at, in, or on said premises, or which may hereafter be brought upon said prem-
23 ises, and all stock and material manufactured or unmanufactured, machinery, tools, fixtures, utensils, and implements of every kind hereafter purchased and brought upon said premises be in transit thereto or manufactured thereon. To have and to hold the same forever. And I, the said party of the first part, will forever warrant and defend the same against all persons whomsoever, upon condition, however, that if the said Marshall Canning Company shall pay to the said Thurber, Whyland & Co., its heirs, assigns, etc., his three promissory notes, dated July 28, 1884, and described as follows, to wit:

One for sixteen thousand two hundred and fifty-one and $\frac{59}{100}$ dollars, due six months after date, and one other note of twenty-five thousand dollars, due six months after date, which last note is given to secure Thurber, Whyland & Co. to said Marshall Canning Company, as shown by contract on back of said note, with interest of eight per cent. per annum, according to the tenor thereof, then these presents to be void; otherwise, in full force. And I, the said Marshall Canning Company, do hereby covenant and agree to and with the said Thurber, Whyland & Co. that in case of default made in payment of the above-mentioned promissory note, or in case of my

attempting to dispose of or remove from said county of Marshall the aforesaid goods and chattels, or any part thereof, or whenever
24 the said mortgagee shall have cause so to do, then and in that case it shall be lawful for the said mortgagee or his assigns, by himself or agent, to take immediate possession of said goods and chattels wherever found, the possession of these presents being his sufficient authority therefor, and to sell the same at public auction, or so much thereof as shall be sufficient to pay the amount due, or to become due, as the case may be, with all reasonable costs pertaining to the taking, keeping, advertising, and selling of said property. And Marshall Canning Company, the said mortgagor, hereby further covenants and agrees with the said Thurber, Whyland & Co. that in the event suit is brought on this mortgage for foreclosure thereof, then and in that case I covenant and agree to pay a reasonable amount as attorney's fees. The money remaining after paying said sums, if any, to be paid on demand to the said party of the first part. Said sale to take place on said premises in the county of Marshall and State of Iowa after giving at least ten days' notice thereof by posting up written notices in three public places in said county. And I hereby authorize the person conducting said sale to adjourn the same, if deemed in his opinion necessary, from time to time until said property be sold, and to give a bill of sale to the pur-
25 chaser thereof, which shall be conclusive as to the regularity of all proceedings connected herewith, and convey absolutely all of my right and title herein.

Witness my hand and seal, this 28th day of July, 1884.

[s. s.] (Signed) MARSHALL CANNING COMPANY,
By H. C. YOUNG, *President.*

26 STATE OF IOWA, }
Marshall County, } *ss:*

Be it remembered that on the 28th day of July, A. D. 1884, before me, the undersigned, a notary public in and for said county personally appeared H. C. Young, president of the Marshall Canning Company, to me personally known to be the identical person whose name is affixed to the foregoing instrument as grantor, and acknowledge the instrument to be his voluntary act and deed, and the voluntary act and deed of the Marshall Canning Company.

Witness my hand and seal notorial, the day and year last above written.

[s. s.] (Signed) J. F. MEEKER,
Notary Public.

27 STATE OF IOWA, }
Marshall County, } *ss:*

Be it remembered that on the 28th day of July, before me, T. Binford, a notary public in and for said county, came Henry C. Young, president of the Marshall Canning Company, of Marshalltown, Iowa, to me personally known to be the identical person whose name is affixed to this mortgage as the president of the

grantor, the corporation herein mentioned, and, who by me being duly sworn, deposes and says, that he resides in Marshalltown, Iowa, in said county; that he is the president of the Marshall Canning Company; that the seal affixed to the within *incesed* is the corporate seal of said Marshall Canning Company affixed to the within indenture by order of said directors for the use therein expressed, and that he did by like order subscribe his name thereto as president of the Marshall Canning Company, and the said instrument is his own true and voluntary act and deed as well as that of the Marshall Canning Company.

(Signed) J. F. MEEKER,
Notary Public, Marshall County, Iowa.

28 STATE OF IOWA, }
Marshall County, } *ss*:

I, L. A. Jennings, county recorder within and for said county, do hereby certify that the within and foregoing is a correct, true, and *verbatim* copy of the chattel mortgage from the Marshall Canning Company to Thurber, Whyland & Co., dated July 28, 1884, and found recorded in chattel-mortgage record 134, page 328, as the same appears in my office.

Witness my hand, the 11th day of October, 1884.

(Signed) L. A. JENNINGS,
Co. Recorder.
G. D. VITES.

Endorsed: Chattel mortgage. From the Marshall Canning Company to Thurber, Whyland & Co. State of Iowa, Marshall county, *ss.* Filed for record this 5th day of Aug., A. D. 1884, at 2.45 p. m. and recorded in book 134, page 328. L. A. Jennings, recorder.

29 EXHIBIT "C."

Know all men by these presents, that we, Thurber, Whyland & Company, of New York, will agree with the Marshall Canning Company, of Marshalltown, Iowa, to advance them sufficient money, not to exceed twenty-five thousand dollars all told, during the packing season of 1884 and to January 1st, 1885, providing they will repay us the debt they now owe us of $16,251.54 and the said advances previous to January 1st, 1885, and will obtain the concent of their creditors not to bring any suits or file any bills for the purpose of collecting their claims until after January 1st, 1885.

THURBER, WHYLAND & CO.

30 Know all men by these presents, that in consideration of the advances of twenty-five thousand dollars, during the packing season of 1884, to the Marshall Canning Company, to be —— by Thurber, Whyland & Co., of New York, as trustees, to take possession of our property and canning factory at Marshalltown, Iowa, sell the pack thereof, and apply the proceeds to paying themselves all advances they may make, and the debt we now owe them

of $16,251.54, and apply the surplus to the payment of the claims of our creditors.

Given under our hand and corporate seal, this 2nd day of August, A. D. 1884.

MARSHALL CANNING CO.,
By H. C. YOUNG, *President.*

We hereby assent to the above.

J. K. ARMSBY & CO.

We accept the within trusteeship, Aug. 5, 1884.

THURBER, WHYLAND & CO.

In consideration of the foregoing agreement of Thurber, Whyland & Co. and the Marshall Canning Company, we hereby agree not [to] prosecute any claims we may hold against Marshall Canning Company until after January 1st, 1885.

——— ———.

We join in above so far as relates to all notes or acceptances to which J. K. Armsby & Co. are a party.

FIRST NATIONAL BANK OF CHICAGO,
S. D. GAGE, *V. P.*
FIRST NATIONAL BANK OF MARSHALLTOWN,
GEO. GLICK.

31 STATE OF IOWA, } *ss:*
Marshall County, }

Upon reading the foregoing petition, it is ordered that the writ of injunction therein prayed for do issue, upon the filing of a bond in the office of the clerk of the court named in said petition, conditioned as required by law, on the penalty of $500, with sureties to be approved by said clerk. Dated this 20th day of October, 1884.

H. C. HENDERSON,
District Judge 11th Jud'l Dist., Iowa.

Endorsed: A. W. Woodward & A. W. Langdon *vs.* The Marshall Canning Co. *et al.* Petition in equity. Filed Oct. 18, 1884. S. R. McLeran, clerk.

32 *Notice to Show Cause against Injunction.*

In the District Court of the State of Iowa, in and for Marshall County.

A. W. WOODWARD & A. W. LANGDON
vs.
THE MARSHALL CANNING COMPANY, THURBER, WYLAND & CO., H. C. YOUNG, A. T. BIRCHARD, WM. J. MORRISON.

To the Marshall Canning Company:

You are hereby notified that the above-named plaintiff, on the 17th day of October, A. D. 1884, filed in the office of the clerk of the dis-

trict court of the State of Iowa, in and for Marshall county, a petition claiming the cancellation of $16,252.00 note and mortgage securing it, and asking that the defendant Canning Company and its officers be restrained from further mortgaging the property of said corporation; the cancellation of a contract of trusteeship, and other equitable relief, and that said pl'ff has applied for a temporary injunction in said petition; and that at 8 o'clock a. m., Oct.
33 20, 1884, at the court-house, in Marshalltown, Ia., H. C. Henderson, judge of said court, will hear said application; at which time and place you may appear and resist said application if you desire so to do.

(Signed) CASWELL & MEEKER,
Att'y for Pl'ff.

34 STATE OF IOWA, }
Marshall County, } ss:

I, J. F. Meeker, on oath say: I served the foregoing notice on the Marshall Canning Company on the 17th day of October, 1884, at Marshalltown, in said county, by then and there giving a true copy thereof to H. C. Young, president of said company, the reading being waived by said H. C. Young.

(Signed) J. F. MEEKER.

Subscribed and sworn to before me and in my presence by J. F. Meeker, 17th day of ——, 1884.

[SEAL.] (Signed) VOLNEY KENT,
Notary Public.

Endorsed: A. W. Langdon, A. W. Woodward *vs.* Marshall Canning Company *et al.* Notice to show cause against granting writ of inj. C. & M.

35 *Original Notice.*

To Marshall Canning Company, Thurber, Whyland & Co., H. C. Young, A. T. Birchard, and William J. Morrison:

You are hereby notified that on or before the 1st day of November, A. D. 1884, there will be filed in the office of the clerk of the district court of Iowa, within and for the county of Marshall, the petition of A. W. Woodward and A. W. Langdon, in which said plaintiffs claim the cancellation of a certain note of $16,252.00, and the mortgages securing it given by said Canning Company to Thurber, Wyland & Co., the cancellation of a contract of trusteeship between the same parties, and also asking that said Thurber, Wyland & Co. be enjoined from foreclosing said mortgage by notice and sale, and from selling or in any manner disposing of the canned goods and chattel property of said company; that said company and its officers be enjoined from further incumb-ing said property of the Canning Company: that a receiver be appointed to take charge of said goods; that after payment of just debts a dividend to stock-

holders be made, and for such other and further relief as may be just and equitable:

36 Now, unless you appear and make defense thereto at or before noon of the second day of the next December term of said court, to be begun and held at Marshalltown, Iowa, on the 8th day of December, A. D. 1884, your default will be entered, and a ——— rendered thereon as prayed for in said petition.

Dated this 17th day of October, A. D. 1884.

A. W. WOODWARD AND
A. W. LANGDON,
Plaintiffs.
CASWELL & MEEKER,
Attorneys.

37 STATE OF IOWA, } ss:
Marshall County, }

Received the within notice the —— day of ——, and I hereby certify I served the same on the persons named below, by reading the same to — and delivering to — a true copy of the same, at the time and place set opposite — name:

Name of Persons.	Month.	Day.	Year.	Township.	County.	State.
H. C. Young	October.	22.	1884.	Marshall.	Marshall.	Iowa.
A. T. Birchard	"	"	"	"	"	"
Wm. J. Morrison	"	"	"	"	"	"
Marshall Canning Co., by H. C. Young, pres. of said Co.	"	"	"	"	"	"
Thurber, Wyland & Co., per A. Parshall, one of said firm	"					

GEO. B. McCORD,
Sheriff of Marshall Co., Iowa,
By H. D. EAST, *Deputy.*

Fees:

Service	$1 50
Copies	1 25
Mileage	50
Total	$3 25

Endorsed: 529. District court, Marshall county. A. W. Langdon & A. W. Woodward *vs.* Marshall Canning Co. *et al.* Original notice. This notice came to hand the 20th day of October, A. D. 1884. Geo. B. McCord, sheriff of Marshall county. Caswell & Meeker, attorneys for pl'ffs.

38 STATE OF IOWA, }
Marshall County, } *ss:*

The State of Iowa to the Marshall Canning Company, Thurber, Whyland & Co., H. C. Young, A. T. Birchard, and William J. Morrison, defendant.

Whereas A. W. Woodward and A. W. Langdon, as plaintiffs, have this day filed in the office of the clerk of the district court of Marshall county aforesaid a certain petition, under oath, making the Marshall Canning Company, Thurber, Whyland & Co., H. C. Young, A. T. Birchard, and Wm. J. Morrison, defendants therein; and whereas, also, the said petition has been duly presented to the Honorable H. C. Henderson, judge of the district court of said county, for the allowance of a writ of injunction as prayed for in said petition; and whereas the said judge made an order allowing said writ of injunction to issue restraining said defendants in manner and form hereafter stated, on the filing of a bond with sureties pursuant to said order; and whereas said order has been complied with and said bond filed and approved:

Now, therefore, you, the said Thurber, Whyland & Co. and William J. Morrison, defendants aforesaid, in the name and by the authority of the State of Iowa, are hereby strictly enjoined and re-
39 strained from further shipping, handling, or in any manner seizing, molesting, or disposing of the canned goods now in the factory or upon the premises of said Canning Company, situated in Marshalltown, Marshall Co., Iowa, and from seizing or selling said goods and chattels under chattel mortgage under date July 28th, 1884, given you by said Canning Company, or otherwise, and from foreclosing said chattel mortgage by notice and sale, and from selling, assigning, or transferring said chattel mortgage and the $16,252.00 note which is therein described, and from taking or holding possession of the real or personal property of said Canning Company, or upon its premises under said contract of trusteeship, or otherwise, and you, the said Marshall Canning Company, H. C. Young and A. T. Birchard, are enjoined and restrained from further mortgaging or incumbering the real or personal property of said Canning Company till the further order of our said district court in the premises.

To the sheriff of Marshall county:

You are hereby commanded to make due service of this writ upon said defendants, and hereof fail not, and make return of this writ unto our said district court, with your doings hereon endorsed,
40 on the first day of the next term of our said district court.

Witness S. R. McLeran, clerk of said district court, Marshall county, Iowa, and the seal of said court hereto affixed, this 20th day of October, 1884.

[s. s.]

—— ——,
Clerk as aforesaid.

Name of Persons.	Month.	Day.	Year.	Township.	County.	State.
H. C. Young	October.	22.	1884.	Marshall.	Marshall.	Iowa.
A. T. Birchard	"	"	"	"	"	"
Marshall Canning Co., by H. C. Young, pres. of said Co.	"	"	"	"	"	"
Thurber, Whyland & Co., per W. A. Parshall, one of said firm	"	"	"	"	"	"

GEO. B. McCORD,
Sheriff of Marshall Co., Iowa.
By H. D. EAST, *Deputy.*

Service	$3 00
Copies	2 50
Mileage	50
Total	$5 00

Endorsed: 529. Writ of injunction. The State of Iowa to Marshall Canning Co., Thurber, Whyland & Co., *et al.* $5.00 charged. Oct. 2, 1884.

41 *Notice of Application to have Injunction Bond Increased to Twenty-five Thousand Dollars.*

STATE OF IOWA, *Marshall County:*

In District Court. In Vacation.

A. W. WOODWARD, A. W. LANGDON
vs.
THE MARSHALL CANNING COMPANY, THURBER, WHYLAND & CO., WILLIAM J. MORRISON, *et al.*

To Caswell and Meeker, attorneys for the plaintiffs in the above-entitled cause:

You are hereby notified that the defendants, Thurber, Whyland & Co. and William J. Morrison, will appear before Hon. H. C. Henderson, judge of the district court of Marshall county, Iowa, at Webster City, Iowa, at 8 o'clock in the forenoon on the 28th day of October, 1884, and asks and pray said judge to increase the injunction bond in this cause on the sum of twenty-five thousand dollars, the motion and affidavits attached hereto will be the basis of said application. You can appear and resist said application at said time and place if you see proper.

Oct. 23, 1884. BINFORD & SNELLING,
Att'y for said Def'ts.

42 We hereby accept service of the within notice and affidavits attached.

Oct. 23rd, 1884. CASWELL & MEEKER,
Att'y for Plaintiffs.

43 OCT. 24, 1884.

It is agreed this application may be presented to the Hon. H. C. Henderson, judge, at the office of Binford & Swelling, Marshalltown, Iowa, at 8 o'clock p. m., Oct. 25, 1884, in case said judge can be there, if not, it may be presented to him at Webster City, at 8 o'clock a. m., Oct. 27, 1884, and in either case plaintiff waives no right to object to said application being thus heard, or from asking a continuance at said time, that they would have if the application was presented at the time and place named in the notice.

BINFORD & SNELLING,
Att'y- for Applicants.
CASWELL & MEEKER,
Att'ys for Plaintiffs.

44 *Motion to Require Plaintiff to Give Additional Injunction Bond.*

STATE OF IOWA, *Marshall County:*

In District Court. In Vacation.

A. W. WOODWARD, A. W. LANGDON
vs.
THE MARSHALL CANNING COMPANY, THURBER, WHYLAND & CO., WM. J. MORRISON, *et al.*

Comes now defendant Thurber, Whyland & Co. and Wm. J. Morrison, defendants, and moves that plaintiff- be required to give additional injunction bond herein in the sum of twenty-five thousand dollars, and for cause thereof shows the court the matters and things alleged in the petition and the affidavits of William J. Morrison and W. A. Parshall, hereto attached and made a part hereof.

BINFORD & SNELLING,
Att'y- at *Def't.*

45 STATE OF IOWA, } *ss:*
Marshall County, }

I, W. A. Parshall, being duly sworn on my oath, say-, I am a member of the firm Thurber, Whyland & Co.; that the Canning Co., defendant herein, now owes us, Thurber, Whyland & Co., about twenty thousand dollars; that the canned goods mentioned in the petition, which we have been enjoined from selling, are perishable goods; that they are liable to be greatly damaged or entirely lost if not properly cared for, and especially, if exposed to frost; that said goods are now selling at a fair price; that we have worked up a good trade; that the expectation is that said goods will depreciate in the market; that we now have regular customers for the goods which we will lose if we are now cut off from supplying the trade; that if the canned goods are lost to us we will be without remedy and must lose our entire claim against the Canning Company. It is highly probable that if this injunction is permitted to stand that we, Thurber, Whyland & Co., will lose our entire claim; that
46 the damages on the orders now in, if we are prevented from filling, will exceed the amount of the present bond.

W. A. PARSHALL.

Subscribed and sworn to before me and in my presence by W. A. Parshall, this 23d day of October, 1884, as witness my hand and seal natorial.

[s. s.]

T. BINFORD,
Notary Public, Marshall Co., Iowa.

47 STATE OF IOWA, *Marshall County:*

I, William J. Morrison, being duly sworn, on my oath say: I am engaged or in the employ of Thurber, Whyland & Co., in looking after their interest in the Canning Company deal at Marshalltown, Iowa, and that for them I hold possession for the trustee of the property, described in plaintiffs' petition. I further say: Said goods are liable to be greatly damaged or entirely lost, if not properly cared for. That by agreement with said trustee and the Canning Company and def't- Young and Birchard, J. K. Armsby & Co., or J. K. Armbsy, was to sell said goods, the pack of this season. That I have learned and believe said Armsby, is now out on the road placing orders for said goods, and that he is now in St. Paul or Minneapolis, and I do not know what orders he has taken that has not been received by us. That of said goods we sold to Sprague, Warner & Co., of Chicago, and the same have been billed to the said firm, but not yet delivered, goods amounting to about eighty thousand seven hundred and ninety-five dollars. That by the terms of said sale these goods are now held by us, subject to the order of Sprague, Warner & Co.,
48 and to be shipped by us on the order of said firm, to such place, and at such time as they direct. That said sale originally amounted to about $10,000.00, part of said goods have already been shipped. That we have sold and billed to Bowler & Taylor, of Marshalltown, Iowa, of the goods now on hand to the amount of $158.50, and we have sold of goods now on hand, besides the sales above named, goods amounting in the aggregate to the sum of $4,850.00 dollars. That if we are prevented from filling said orders we may sustain great damage.

WM. J. MORRISON.

Subscribed and sworn to before me and in my presence by the said Wm. J. Morrison, this 23d day of October, 1884, as witness my hand and seal natorial.

[s. s.]

T. BINFORD,
Notary Public, Marshall Co.

Endorsed: District court, Marshall county. A. W. Woodward, A. W. Langdon *vs.* The Marshall Canning Co. *et al.* Notice, motion, & affidavits for increase of injunction bond. Filed Oct. 24, 1884. S. R. McLeran, clerk.

49 STATE OF IOWA, } ss:
Marshall County, }

I, H. C. Young and A. T. Birchard, on oath say, each for himself, that I am a stockholder and officer of the Marshall Canning Company, of Marshalltown, Iowa; that I know the financial standing of

said company, and the amount and value of the assets of said company; that the actual amount of money and merchandise advanced by Thurber, Wyland & Co. to said Canning Company up to the date hereof, to be used, and which has been used, in putting up the pack of said company for the season of 1884, is $43,395.43, and the actual amount in goods by said Canning Company delivered to said Thurber, Wyland & Co. is the sum of $39,002.15, leaving a balance still due said Thurber, Wyland & Co. for the money thus advanced is $4,393.28, and that these affiants deny that the canned goods will keep for years in a warehouse or store without material loss or damage; that the goods put up by said company are in good condition and perfectly excluded from the air, and are now stored in a double-walled brick building and warehouse on the grounds
50 of said Canning Company, where they are fully protected from the weather.

These affiants expressly deny that said firm of Thurber, Wyland & Co. are selling said goods at fair prices, but aver that said goods are being sold at low prices and at actual loss to said Canning Company.

The actual cost of manufacturing three-pound cans of tomatoes per dozen to said company during the packing season of 1884 is 90 cents, and the same are now being — by said Thurber, Wyland & Co. at such rates that said Canning Company realizes per dozen cans the sum of 81 cents, being an actual loss of 9 cents per dozen. That 2-lb. corn was manufactured during said season at a cost of 80 cents per dozen, and are being sold at such rates that the Canning Company realizes 85 cents per dozen.

The above prices are taken from actual figures, as shown by the books of said company, after a careful and correct examination thereof.

These affiants say that said goods, with the exception of a few small customers, have been sold to the regular customers of said Canning Company, and that as there is a limited supply of canned goods in the country instead of depreciating in value these
51 affiants say, in their opinion, said goods will be worth more in 90 days from this date than they are now bringing in the market.

These affiants say, so far as the goods now billed to Sprague, Warner & Co. are concerned, the bill of $158.00 to Bowler and Taylor, as the Canning Company has received a credit for the goods thus billed, the attorneys of A. W. Langdon and A. W. Woodward, Caswell & Meeker, of Marshalltown, Iowa, have consented and directed that said goods should be shipped, as per terms of sale, in the same name *name* as other shipments have been made.

These affiants further say that within the last two days they have learned from one of the applicants, in support of the motion of defendant to increase the amount of the bond in this case, that J. K. Armsby is now in Chicago sick, and has been for three weeks last past, and is not on the road taking orders for goods in the interest of Thurber, Wyland & Co., and there will be no loss in that particular.

These affiants say the said Marshall Canning Company is in pos-

session of said canned goods, and can and will ship all orders on the books of said company, and out of the proceeds thereof
52 will pay any balance due Thurber, Wyland & Co. for money advance- as aforesaid, or pass the goods to the credit of said Thurber, Wyland & Co.

That on this 25th day of October, A. D. 1884, said Canning Company have shipped of the Sprague, Warner & Co. goods twelve hundred cases, amounting to about $2,400.00.

H. C. YOUNG.
A. T. BIRCHARD.

Subscribed and sworn to before me, and in my presence, by H. C. Young and A. T. Birchard, this 25th day of October, A. D. 1884.

[s. s.] J. T. MEEKER,
Notary Public, Marshall County, Iowa.

Endorsed: Langdon & Woodward *vs.* Thurber, Whyland & Co. *et al.* Affidavits in resistance of motion to increase bond. Filed Oct. 27, '84. S. R. McLeran, clerk.

53 MARSHALLTOWN, IOWA, *Oct.* 25, 1884.

A. W. WOODWARD and A. W. LANGDON
vs.
THURBER, WHYLAND & Co. and MARSHALL CANNING COMPANY *et al.*

In the matter of the application of defendants Thurber, Wyland & Co. for additional security on injunction bond.

Come now the parties plaintiff-, by Caswell & Meeker, and the defendants T., W. & Co., by Binford & Swelling, and submit motion for additional security and affidavits supporting and resisting the same, and after argument of council and due consideration of the facts submitted, I hereby order that the determination of the application for additional security be postponed until Monday, November 3rd, A. D. 1884, at 9 o'clock a m., at the court-house in Marshalltown, Iowa; and it further appearing to me that the right and interest of the parties litigant cannot be protected and subserved without the appointment of a receiver, as prayed for in the plaintiffs' petition, it is, therefore, ordered that at the time and place last above mentioned the matter of the appointment of a receiver shall he heard and determined.

54 It is further ordered that until the appointment of a receiver the goods in controversy shall remain in store on the premises of the defendants, the Marshall Canning Company, without the molestation of any of the parties litigant, unless otherwise directed by the plaintiffs or their attorneys, and the defendants Thurber, Whyland & Co., in writing, except that the orders mentioned in the affidavits of Sprague, Warner and Co. and Bowler and Taylor shall be filled according to contract, as shown by the books of the Canning Company. The goods in said order to be delivered or shipped under the supervision of a person to be designated immediately by the plaintiffs or their attorneys on the one side and the

defendants Thurber, Whyland & Co. on the other side; and if they cannot agree upon a suitable person, then each party shall select one person under who- joint supervision said order shall be filled.

H. C. HENDERSON, *Judge.*

55 MONDAY MORNING, *Oct.* 27, 1884.

It is hereby ordered that Geo. Glick be, and he hereby is, appointed a temporary receiver, to take charge of the property in controversy temporarily, until the matter of an appointment of a receiver be heard and determined. He shall supervise the filling of the orders provided for in the foregoing order, and act under said order in lieu of the person or persons provided for in said order. He shall execute a bond in a penalty of $10,000.00.

H. C. HENDERSON.

Endorsed: A. W. Langdon *et al. vs.* Thurber, Whyland & Co. *et al.* Order. H. C. Henderson. Filed Oct. 27, '84. S. R. McLeran, clerk.

56 *Petition of Defendants Thurber, Whyland & Co. and Wm. J. Morrison for Removal to the Circuit Court of the United States for the Southern District of Iowa, Central Division.*

STATE OF IOWA, *Marshall County:*

In District Court for said County.

A. W. WOODWARD, A. W. LANGDON
vs.
THE MARSHALL CANNING COMPANY, THURBER, WHYLAND & CO., WM. J. MORRISON, H. C. YOUNG, and A. T. BIRCHARD.

To said district court:

Your petitioners, the above-named defendants, Thurber, Whyland & Co. and William J. Morrison, respectfully show to the honorable court that the matter and amount in dispute in the above-entitled suit exceeds, exclusive of costs, the sum or value of five hundred dollars.

That the controversy in said suit is between citizens of different States, and that your petitioners and each of them were, at the commencement of this suit, and still are now, residents of the State of Iowa.

That the above-named petitioner, Thurber, Whyland & Co., was, at the time of the commencement of this suit, and still is, a
57 citizen of the State of New York; that said Thurber, Whyland & Co. is a copartnership, whose principal place of business at the time of the commencement of this suit was and still is in the State of New York.

That said firm is composed of H. K. Thurber (a special partner), Francis B. Thurber, Albert E. Whyland, Jacob S. Gates, William A. Parshall, Henry B. Kirkland, who were each a member of said firm at the time of commencement of said suit, and is still a member of said firm. That each of the above-named members of said

firm was, at the commencement of this suit, and still is, a citizen of the State of New York, and Alexis Godillot, Jr., who was a member of said firm at the time of commencement of said suit and is still such member, and that said Alexis Godillot, Jr., was, at the commencement of said suit, and still is, a citizen of the State of Connecticut. That your petitioner, William J. Morrison, was, at the time of the commencement of this suit, and still is, a citizen of the State of New Jersey.

That the plaintiff, A. W. Langdon, was, at the commencement of this suit, and still is, a citizen of the State of New York.

That the other plaintiff, A. W. Woodward, was at the com-
58 mencement of this suit, and still is, a citizen of the State of Illinois.

That the defendants in the action, "The Marshall Canning Company," "H. C. Young," and "A. T. Birchard," and each of them was, at the commencement of this suit, and still is, a citizen of the State of Iowa.

Your petitioners state that in said suit above mentioned there is a controversy which is wholly between citizens of different States, and which can be fully determined as between them, "to wit," a controversy between the defendant, "The Marshall Canning Company," and your petitioner, "Thurber, Whyland & Co.," which is in fact the only real controversy in this suit, which controversy is to determine the validity of the mortgages set out in the plaintiffs' petition and the note of $16,252.00 secured by said mortgages, and to determine the validity of the agreement between your petitioner and "Marshall Canning Company," by which "Thurber, Whyland & Co." were appointed and constituted trustee of said property, as set out in plaintiffs' petition, and also to determine if the contract set out in petition, in which the $16,252.00 note was given, is usurious or not. That the Marshall Canning Company, defendant, was, at the commencement of this suit, and still is, the real party in
59 interest. The plaintiffs in said suit and defendants, H. C. Young and A. T. Birchard, being only nominal parties thereto, having no interest whatever in the controversies between said Marshall Canning Company and your petitioner, Thurber, Whyland & Co.

And your petitioner offers herewith a bond with good and sufficient surety for their entering in said circuit court of the United States for the southern district of Iowa, central division, on the first day of its next session, a copy of all the record in this suit, and for paying all costs that may be awarded by said circuit court, if said court shall have hold that this suit was wrongfully or improperly removed thereto.

And they pray this honorable court to proceed no further herein, except to make the order of removal required by law and to cause the record herein to be removed into said circuit court of the United States in and for the southern district of Iowa, central division, as they will ever pray.

BINFORD AND SNELLING,
Att'y- for Defendants, Thurber, Whyland & Co.
and William J. Morrison.

60 Endorsed: District court, Marshall county, State of Iowa. A. W. Woodward, A. W. Langdon *vs.* The Marshall Canning Co., Thurber, Whyland & Co., H. C. Young, A. T. Birchard, Wm. J. Morrison. Petition by Thurber, Whyland & Co. & Wm. J. Morrison for removal of circuit court of U. S. Binford & Swelling, att'ys for petition-.

61 STATE OF IOWA, *Marshall County,* } ss:

I, W. A. Parshall, being duly sworn, on my oath state: I am a member of the firm of Thurber, Whyland & Co., one of the petitioners herein; that I have heard read the matters and things stated in the foregoing petition for the removal of said cause to the United States circuit court; that the matters and things stated in said petition are true, as I verily believe.

W. A. PARSHALL.

Subscribed and sworn to before me and in my presence by the above-named W. A. Parshall, this 28th day of October, A. D. 1884, as witness my hand and seal notarial.

T. BINFORD,

[S. S.] *Notary Public, Marshall County, Iowa.*

62 Know all men by these presents, that we, Thurber, Whyland & Co. and William J. Morrison, as principal-, and Geo. Glick, as surety, are held and firmly bound unto A. W. Langdon, A. W. Woodward, and H. C. Young, andA. T. Birchard, and the Marshall Canning Co. in the penal sum of five hundred dollars, the payment whereof, well and truly to be made unto said A. W. Woodward and A. W. Langdon and the Marshall Canning Company, its heirs, assigns, and successors, we bind ourselves, our heirs, representatives, and assigns, jointly and severally, firmly by these presents.

Yet upon these conditions: The said Thurber, Whyland & Co. and William J. Morrison having petitioned the district court of Marshall county, State of Iowa, for the removal of a certain cause therein pending, wherein A. W. Langdon and A. W. Woodward are plaintiffs, and Thurber, Whyland & Co., William J. Morrison, The Marshall Canning Company, H. C. Young, and A. T. Birchard are defendants, to the circuit court of the United States in and for the southern district of Iowa, central division: Now if the said Thurber, Whyland & Co. and William J. Morrison, your petition-

63 ers shall enter into said circuit court of the United States on the first day of its next session a copy of the record in said suit and shall well and truly pay all costs that may be awarded by said circuit court of the United States if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void; otherwise, in full force and virtue.

Witness our hands and seals, this 28th day of October, A. D. 1884.

THURBER, WHYLAND & CO.
WM. J. MORRISON.
GEO. GLICK.

64 STATE OF IOWA, } ss:
Marshall County, }

I, George Glick, being duly sworn, on my oath say that I am the surety on the foregoing bond. That I am a resident of the State of Iowa. That I am worth five thousand dollars beyond the amount of my debts, and that I have property liable to execution in the State of Iowa in the sum of five thousand dollars.

GEO. GLICK.

Subscribed and sworn to before me and in my presence by the above-named George Glick, this 28th day of October, A. D. 1884, as witness my hand and seal notorial.

[s. s.] T. BINFORD,
Notary Public, Marshall County.

Endorsed: State of Iowa, district court, Marshall county. A. W. Langdon *vs.* The Marshal Canning Co., Thurber, Whyland & Co., Wm. J. Morrison, H. C. Young, A. T. Birchard. Petition of Thurber, Whyland & Co., Wm. J. Morrison & bond for removal to circuit court, United States. Filed and approved Oct. 28, 1884. S. R. McLeran.

65 STATE OF IOWA, } ss:
Marshall County, }

I, S. R. McLeran, clerk of the district court in the State of Iowa, in and for said county, do hereby certify that the foregoing is a true and perfect transcript of all papers filed in above-entitled cause, as fully as the same remains on file in my office.

In witness whereof, I have set my hand and affixed the seal of said court at Marshalltown, Iowa, this 30th day of October, A. D. 1884.

[s. s.] (Signed) S. R. McLERAN,
Clerk Dis't Court.

Endorsed: 2060. Eq. Filed Oct. 31, 1884. Ed. R. Mason, clerk.

66 And on the 31st day of October, 1884, the defendants, Thurber, Whyland & Co., by Charles A. Clark, their solicitor, filed in said cause a præcipe for appearance, which said appearance is in the words and figures following, to wit:

67 *Præcipe for Appearance.*

United States District Court, Southern Dist. Iowa, Central Division.

A. W. WOODWARD *et al.*
vs.
THE MARSHALL CANNING COMPANY. *et al.* } No. ——.

The clerk of said court will please enter my appearance for Thurber, Wyland & Co., defendants in above cause, and docket the same on equity docket.

(Signed) CHAS. A. CLARK,
Att'y for said Def'ts.

The names of all parties for whom appearance is entered must be written in full.

Endorsed: United States court, southern district of Iowa. No. 2060. Eq. Woodward *et al. vs.* Marshall Canning Co. *et al.* Præcipe for appearance of Thurber, Wyland & Co. Charles A. Clark, attorneys. Filed October 31, 1884. Ed. R. Mason, clerk.

68 And on the 3rd day of November, 1884, there was filed in said cause an amendment to the transcript of the district court of Marshall county, Iowa, which said amendment is in the words and figures following, to wit:

69 *Injunction Bond.*

Know all men by these presents, that we, A. W. Woodward, A.W. Langdon, principals, and Geo. Glick, surety, are held and firmly bound unto the Marshall Canning Company, Thurber, Wyland & Co., H. C. Young, A. T. Birchard, and Wm. J. Morrison in the penal sum of five hundred dollars ($500), lawful money of the United States, well and truly to be paid to the said defendants and to their heirs, executors, and assigns.

The condition of the above obligation is such, that whereas the said A. W. Woodward and A. W. Langdon, the 18th day of October, 1884, filed in the office of the clerk of the district court of the State of Iowa, in and for Marshall county, a petition praying the issuance of an injunction to restrain the sale of the following-described property: The canned goods now in the building or factory, or upon the premises, of said Canning Company in Marshalltown, Marshall Co., Iowa, and said real and personal property, and from foreclosing a certain chattel mortgage of date July 28th, 1884, and from selling or transferring said chattel mortgage and note of $16,252.00; and

whereas, on the 20th day of October, A. D. 1884, the Hon-
70 orable H. C. Henderson, judge of the district court of the State of Iowa in and for Marshall county, made an order on said petition, allowing said writ of injunction, upon the giving of a bond by the plaintiffs in the penal sum of five hundred dollars:

Now, therefore, if the said A. W. Woodward and A. W. Langdon shall and will pay all the damages which may be adjudged against him, by reason of such injunction, then this obligation to be void, otherwise to remain in full force and virtue.

Dated this 20th day of October, A. D. 1884.

A. W. WOODWARD & A. W. LANGDON,
Principals.

Per CASWELL & MEEKER,
Their Attorneys.

GEO. GLICK, *Surety.*

Endorsed: No.—. Circuit court. A. W. Woodward, A. W. Langdon *versus* Thurber, Whyland & Co. *et al.* Injunction bond. The within bond and the sureties therein approved by me, this 20th day of Oct., A. D. 1884. S. R. McLeran, clerk. Filed Oct. 20, 1884. S. R. McLeran.

71 Know all men by these presents, that we, Geo. Glick, principal, ——; and sureties, are held and firmly bound unto A. W. Langdon, A. W. Woodward, The Marshall Canning Company, Thurber, Whyland & Co., H. C. Young, A. T. Birchard, and Wm. J. Morrison in the penal sum of ten thousand dollars, lawful money of the United States, well and truly to be paid to them and their heirs, executors, and assigns.

The condition of this obligation is such, that whereas the said Geo. Glick was, on the 27th day of October, 1884, appointed by Hon. H. C. Henderson, judge of the district court of the State of Iowa, in and for Marshall county, Iowa, temporary receiver in an action pending in said court wherein A. W. Langdon and A. W. Woodward are plaintiffs and The Marshall Canning Company, Thurber, Whyland & Co., H. C. Young, A. T. Birchard, and Wm. J. Morrison defendants:

Now, if the said receiver shall and will well and faithfully discharge his duties as such receiver, and obey the orders of the court in respect thereto, then this obligation to be void; otherwise, to remain in full force and virtue.

Dated October 27th, 1884.

72 GEO. GLICK, *Principal.*
GEO. F. KIRBY, *Surety.*

I, George Glick, named in the foregoing bond as receiver, do hereby solemnly swear that I will faithfully discharge my trust as such receiver to the best of my ability. So help me God.

(Signed) GEO. GLICK.

Subscribed and sworn to before me and in my presence by George Glick, this 27th day of October, A. D. 1884.

[s. s.] (Signed) S. R. McLERAN,
Clerk of District Court.

Endorsed: A. W. Langdon, A. W. Woodward *vs.* Thurber, Whyland & Co. *et al.* Bond and oath of receiver. Filed and approved Oct. 27th, 1884. S. R. McLeran, clerk.

73 I, S. R. McLeran, clerk of the district court of Iowa within and for Marshall county, hereby certify that the within and foregoing makes, with the transcript hereto certified by me in this case, a full and complete transcript of the entire record of said cause as it appears in my office, and this is certified as an amendment to the transcript heretofore certified by me, the two bonds and oath of receiver and filings thereon having been by me omitted from the original transcript by oversight and mistake.

In witness whereof, I hereunto affix my hand and seal of office, this first day of November, A. D. 1884.

[s. s.] (Signed) S. R. McLERAN,
Clerk Dist. Court.

Endorsed: A. W. Woodward, A. W. Langdon *vs.* Marshall Canning — *et al.* Amendment to transcript hereto filed. No. 2060. Eq. Filed Nov. 3, 1884. Ed. R. Mason, clerk.

74 And on the 13th day of November, 1884, the complainants, by Nourse and Kauffman, their solicitors, filed in said cause a motion to remand the same to the district court of Marshall county, Iowa, which said motion to remand is in the words and figures following, to wit:

75 A. W. WOODWARD and A. W. LANGDON
vs.
THE MARSHALL CANNING CO., THURBER, WYLAND & CO., H. C. YOUNG, A. T. BIRCHARD, and WM. J. MORRISON. } No. 2060. Equity.

To the circuit court of the U. S. district of Iowa:

Come now the plaintiffs, A. W. Woodward and A. W. Langdon, and move the court to remand this cause to the district court of Marshall county, State of Iowa, and to strike out the cause from the docket of this court, and for cause of such motion assign the following:

1st. The record shows that the plaintiff A. W. Langdon is and was, at the date of the commencement of this suit, a resident of the State of New York, and that the defendants are nearly all, and at the date of the commencement of this suit were, residents of the same State, and that the only controversy in the case is between the plaintiffs and the defendants.

2nd. The State court has denied the application of defendants to change the jurisdiction, and no proper ground is shown to oust the State court of its jurisdiction in the cause.

(Signed) NOURSE & KAUFFMAN,
Att'ys for Pl'ff-.

76 Endorsed: 2060. Eq. A. W. Woodward & A. W. Langdon *vs.* The Marshall Canning Co. *et al.* Motion to remand and dismiss. Filed Nov. 13, 1884. (Signed) Ed. R. Mason, clerk. Nourse & Kauffman, for pl'ffs.

77 And on the 26th day of November, 1884, the defendants, Thurber, Wyland & Co. and Wm. J. Morrison, by Binford and Snelling, their solicitors, filed in said cause a notice, motion, and affidavits to vacate the receivership and injunction in said cause; which said notice, motion, and affidavits are in the words and figures following, to wit:

78 *Notice.*

In the Circuit Court of the United States for the Southern District of Iowa (Central Division).

A. W. WOODWARD, A. W. LANGDON
vs.
THE MARSHALL CANNING COMPANY, THURBER, WHYLAND & CO., *et al.*

To Caswell and Meeker, attorneys for plaintiffs, A. W. Langdon and A. W. Woodward, in the above-entitled cause:

You are hereby notified that on Friday, the 14th day of Novem-

ber, 1884, at 10 o'clock in the forenoon, at Keokuk, Iowa, the defendants, Thurber, Whyland & Co. and William J. Morrison, will apply to the Hon. J. M. Love, judge of the circuit court of the United States for the southern district of Iowa, for the vacation of the order appointing George Glick temporary receiver, and to dissolve the injunction heretofore granted. Said application will be based upon the motions and affidavits heretofore attached, and the petition of plaintiffs in the cause, and all the affidavits heretofore filed. Said application will be heard by the said judge at chambers.

79 You can appear and resist the same if you see proper.

BINFORD & SNELLING,
Att'y for Defendants, Thurber, Whyland & Co. and Wm. J. Morrison.

MARSHALLTOWN, IOWA, *Nov.* 8, 1884.

We hereof accept service of this notice and copy of motions and affidavits.

(Signed) CASWELL & MEEKER,
Att'ys for Pl'ffs.

80 *Motion to Vacate the Order Appointing Temporary Receiver.*

In the Circuit Court of the United States for the Southern District of Iowa (Central Division).

A. W. WOODWARD, A. W. LANGDON
vs.
THE MARSHALL CANNING COMPANY, THURBER, WHYLAND & CO., *et al.*

Comes now defendants, Thurber, Whyland & Co. and William J. Morrison, and moves the court to vacate the order appointing George Glick temporary receiver, for the following reasons:

1st. Said order was made by the Hon. H. C. Henderson, judge, without notice to these defendants, and without any application being made therefor, except the verbal request of plaintiffs' attorney, and not in the presence of these defendants or their attorneys.

2nd. The defendant, Thurber, Whyland & Co., as shown by plaintiffs' petition and exhibits, were in possession of the property of the Canning Company as trustee for themselves, the Canning Company and all the creditors of the Canning Company with one exception, and it does not appear from said petition that defendant, Thur-

81 ber, Whyland & Co., had or were about to make any disposition of the property inconsistent with the interest of the creditors and the Canning Company.

3rd. It does not appear by said petition that the defendant, Thurber, Whyland & Co., had or were about to place said property beyond the reach of this court; nor is it alleged in said petition that said defendants are insolvent or unable to respond in damages for any sum that might be adjudged against them.

4th. The petition shows the plaintiffs have no interest in this controversy, except they may say that of having their debts paid, but, if their creditors are satisfied with the action of the trustee, plaintiffs

cannot have a new trustee appointed, or a receiver, against the wishes of these defendants and the creditors of the Canning Company.

5th. By reason of the matters and things set forth in the petition of plaintiffs and affidavits heretofore filed.

6th. There is no equity in the bill filed by plaintiff.

7th. The petition and exhibits filed by plaintiff shows that the plaintiff is not entitled to a receiver against the objection of these defendants and the creditors of the Canning Company.

BINFORD & SNELLING,
Att'y- for Def'ts Above Named.

82 *Motion to Vacate the Order Granting Temporary Injunction.*

In the Circuit Court of the United States for the Southern District of Iowa (Central Division).

A. W. WOODWARD, A. W. LANGDON
vs.
THE MARSHALL CANNING CO., THURBER, WHYLAND & CO., *et al.*

Comes now defendants, Thurber, Whyland & Co. and William J. Morrison, and moves the court to dissolve the injunction heretofore granted by the Hon. H. C. Henderson, judge of the district court of Iowa, in and for Marshall county, for the following reasons:

1st. There is no equity in the petition or bill.

2nd. The plaintiffs are not entitled to the relief prayed for, or any other relief, upon the allegations of their petition.

3rd. Plaintiffs have an adequate remedy at law.

4th. The affidavits heretofore filed in this cause, and that of T. Binford and W. J. Morrison, filed herewith, contain matters and things that show the injunction should be dissolved.

5th. The injunction was granted without notice, except to
83 the corporation defendant, who is in collusion with plaintiffs, and the said order was made without authority of law.

6th. This action was brought by plaintiffs as stockholders to correct the irregularities of the corporation without first asking the corporation itself to correct them, and they are therefore not entitled to maintain this suit.

7th. It is not claimed that the trustee, Thurber, Whyland & Co., is insolvent or unable to respond in damages in any sum that may be adjudged against them.

8th. The injunction enjoyed the defendant, Thurber, Whyland & Co., from the possession of property that belonged to them absolutely, and in which the Canning Company nor plaintiffs claim any interest. (See affidavits of Parshall and Morrison.)

BINFORD & SNELLING,
Att'y- for said Def'ts.

84 STATE OF IOWA, }
Marshall County, } *ss:*

I, William J. Morrison, being duly sworn, on my oath say: I am agent of defendant, Thurber, Whyland & Co., in the transaction of

their business with the Marshall Canning Company, defendant; that, as such agent for said Thurber, Whyland & Co., as trustee, I have had full charge and control of all the transaction complained of by the plaintiffs in their petition filed in this cause; that no goods have been sold or shipped by me as said agent, except the price and terms were satisfactory to the defendant, the Canning Co.; that in every instance this affiant consulted with the president, H. C. Young, in regard to the price offered for any goods ordered, and obtained his consent thereto before said order was filled.

This affiant says it is not true that goods have been shipped by these defendants without *bona fied* orders, as alleged in said petition. That no goods have been shipped by Thurber, Whyland & Co. except goods sold in good faith and with the knowledge and consent of said Canning Company.

On the contrary, at the time of the granting of the in-
85 junction and of the obtaining of the order appointing a temporary receiver, there was in the warehouse of the defendant Canning Co. from six to eight thousand dollars worth of goods that were sold and billed, and the defendant, Canning Co., had received credit therefor on their account with defendant, Thurber, Whyland & Co.; which goods, although belonging to Thurber, Whyland & Co., and in which the Canning Co. had no interest, were, by said injunction and order appointing the receiver, placed beyond the control of the defendant, Thurber, Whyland & Co.; that at the time of the issuing of said orders this affiant held many orders for goods, amounting to many thousand dollars; which orders are still held by this affiant, unfilled, parties sending them awaiting the action of this court.

Except since the granting of said orders some goods have been shipped by the receiver.

That in every particular this affiant, for Thurber, Whyland & Co., has complied strictly with the terms and conditions of the contract whereby Thurber, Whyland & Co. were appointed trustees, and in no instance has the Canning Company or any of the creditors made complaint before the bringing of this suit.

WM. J. MORRISON.

86 Subscribed and sworn to before me and in my presence by the above-named Wm. J. Morrison, this 8th day of November, A. D. 1884, as witness my hand and seal.

[s. s.] T. BINFORD,
Notary Public, Marshall Co., Iowa.

87 STATE OF IOWA, *Marshall County:*

I, T. Binford, being duly sworn, on my oath say: I was (of) counsel for Thurber, Whyland & Co. at the time of the transaction with the Marshall Canning Co., in which the mortgages, notes, and agreements set out in petition were executed and delivered. That in addition to the consideration named in the petition for the $16,252 dollar note, Thurber, Whyland & Co. surrendered to the Canning Company about six thousand dollars in drafts against the Canning

Co., drawn in favor of J. K. Armsby & Co. and by them endorsed to Thurber, Whyland & Co. Also that said Thurber, Whyland & Co. obtained the cancellation of a twenty thousand mortgage given by said Canning Co. to J. K. Armsby & Co., and the surrender to them of two ten thousand dollar notes secured by said mortgage, all of which was held by said Thurber, Whyland & Co. Also that said Thurber, Whyland & Co. would act as trustee for said Canning Company and their creditors. Also the said Thurber, Whyland & Co. should take charge of the entire pack and sell the same, and when the sales or any sale was made the Canning Company should at once have credit for that amount.

88 That the contract whereby the $16,252.00 dollar note was given, and the agreement to loan the Canning Company money enough to put up the pack of 1884, not exceeding twenty-five thousand dollars, was one and the same contract, and the agreement to loan twenty-five thousand dollars was dependant upon the agreement and giving of the $16,252.00 note.

(Signed) T. BINFORD.

Subscribed and sworn to before me and in my presence by T. Binford, this 8th day of November, A. D. 1884, as witness my hand and seal.

[s. s.] (Signed) W. E. SNELLING.

Endorsed: In United States circuit court, southern district of Iowa (central division). 2060. Eq. A. W. Langdon, A. W. Woodward *vs.* The Marshall Canning Co., Thurber, Whyland & Co. Notice and motion to dissolve injunction and vacate the order appointing receiver. Filed Nov. 26, '84. Ed. R. Mason, clerk.

89 And on the 26th day of November, 1884, an order denying motion to vacate the receivership and dissolve injunction was filed in said cause, in the words and figures following, to wit:

90 A. W. WOODWARD *et al. vs.* MARSHALL CANNING CO. *et al.*

At DUBUQUE, *November* 21, 1884.

The judges holding the court here all concur in the opinion that the jurisdiction cannot be maintained in this case and that the cause will have to be remanded.

We are all of opinion that the real controversy is between the plaintiffs and Thurber, Wyland & Co., both citizens of New York, and that if there is any nominal party it is the Marshall Canning Company.

The injunction must, therefore, be denied; also the motion to discharge the receiver.

The order remanding the cause being final and appealable can be made and entered only in term time.

(Signed) J. M. LOVE.

Endorsed: 2060. Eq. Woodward *et al vs.* Marshall Canning Co. *et al.* Order denying motion to dissolve injunction, etc. Filed Nov. 26, 1884. (Signed) Ed. R. Mason, clerk.

91 And on the 13th day of January, 1885, it being of the October term, 1884, in the record of the proceedings of said court is the judgment entered in said cause, in the words and figures following, to wit:

United States Circuit Court, Southern District of Iowa, Central Division. October Term, 1884.

TUESDAY, *Jan. 13th*, 1885.

A. W. WOODWARD and A. W. LANGDON
vs.
MARSHALL CANNING COMPANY, THURBER, WHYLAND & CO., H. C. YOUNG, A. T. BIRCHARD, WM. J. MORRISON. } No. 2060. Eq.

This cause came on this day for hearing upon the motion of Thurber, Whyland & Co., to dissolve the injunction and vacate the order appointing a receiver heretofore submitted at Keokuk. Complainants appear by Nourse & Kauffman and defendants, Thurber, Whyland & Co., by Binford & Snelling and Charles A. Clark; and the court being now fully advised in the premises it is ordered that said motions be, and the same are hereby, overruled.

91½ Thereupon the cause came on for hearing upon the complainants' motion to remand this cause to the State court, and the court being now fully advised in the premises it is ordered that the said motion to remand be sustained and that this cause be, and the same is hereby, remanded to the district court of Marshall county, Iowa, at the costs of Thurber, Whyland & Co. It is therefore ordered, adjudged, and decreed that the defendants, Thurber, Whyland & Co., pay the costs herein taxed at $——, and that execution issue therefor.

To all which rulings the defendants, Thurber, Whyland & Co., duly excepted and pray an appeal to the Supreme Court of the United States, which is allowed, and the supersedias bond to be filed herein is fixed at the sum of one thousand dollars with sureties to be approved by one of the judges of this court.

92 And on the 19th day of January, 1885, a supersedias bond was filed in said cause, which said bond was in the words and figures following, to wit:

93 *Supersedias Bond.*

In the United States Circuit Court in and for the Southern District of Iowa (Central Division).

A. W. WOODWARD, A. W. LANGDON
vs.
THE MARSHALL CANNING CO., THURBER, WHYLAND & CO., H. C. YOUNG, A. T. BIRCHARD, and WM. J. MORRISON.

Know all men by these presents, that Thurber, Whyland & Co., as principal, and George Glick, as surety, are held and firmly bound unto A. W. Woodward and A. W. Langdon in the sum of one thou-

sand dollars, to be paid to the said A. W. Woodward and A. W. Langdon, their executors and administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, administrators, and successors, firmly by these present. Sealed with our seals, dated January 13th, 1885. Whereas the above-bounded Thurber, Whyland & Co. has procured and been allowed an appeal to the Supreme Court of the United States, to reverse the judgment and decree rendered in the above-entitled action by the circuit court of the
94 United States for the southern district of Iowa, central division:

Now therefore, the condition of this obligation is such, that if the above-named Thurber, Whyland & Co. shall prosecute their said appeal to effect, and answer all costs and damages if it shall fail to make good their plea, then this obligation shall be void; otherwise, of full force and effect.

THURBER WHYLAND & CO.,
By BINFORD & SNELLING, *Their Att'y.*
GEORGE GLICK.

Endorsed: 2060. Equity. A. W. Woodward, A. W. Langdon *vs.* The Marshall Canning Co., Thurber, Whyland & Co., *et al.* Supercedias bond. Filed Jan. 19, 1885. (Signed) Ed. R. Mason, clerk.

95 STATE OF IOWA, *Marshall County:*

I, George Glick, the undersigned, first being duly sworn, depose and says for himself: That he is the surety whose name is subscribed to the within and foregoing bond; that he is a freeholder and a resident of the State of Iowa; that he is worth double the sum secured by said bond, beyond the amount of his debts and liabilities, to wit, the sum of five thousand dollars; and that he has property liable to execution in said State equal to the sum secured in said bond, to wit, the sum of five thousand dollars.

(Signed) GEORGE GLICK.

Subscribed in my presence and sworn to before me by Geo. Glick, this 13th day of January, A. D. 1885, as witness my hand and seal.

[s. s.] (Signed) T. BINFORD,
Notary Public.

Approved—
(Signed) J. M. LOVE, *Judge.*

Endorsed: 2060. Eq. A. W. Woodward, A. W. Langdon *vs.* The Marshall Canning Co., Thurber, Whyland & Co. Supersedias bond. Filed Jan. 19, 1885. E. R. Mason, clerk.

96 And on the 24th day of January, 1885, an original citation was filed in said cause, in the words and figures following, to wit:

97 The United States of America to A. W. Woodward & A. W. Langdon, Greeting:

You are hereby cited and admonished to be and appear at a Su-

preme Court of the United States to be holden at Washington on Wednesday, Feb'y 18th, 1885, pursuant to an appeal allowed & filed in the clerk's office of the United States circuit court in & for southern district of Iowa, central division, wherein Thurber, Whyland & Co. are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable J. M. Love, judge of the United States circuit court, southern district of Iowa, this 20th day of January, in the year of our Lord one thousand eight hundred and eighty-five.

J. M. LOVE, *Judge.*

97½ [Endorsed:] No. 2060 Eq. A. W. Woodward *et al. vs.* Marshall Canning Co. *et al.* Citation. Filed Jan. 24, 1885. Ed. R. Mason, clerk.

Service of the within citation, with copy thereof in hand, is hereby acknowledged, this 23rd day of Jan'y, 1885, at Des Moines, Iowa.

NOURSE & KAUFFMAN,
Att'ys for Woodward & Langdon, Appellees.

98 The United States Circuit Court, Southern District of Iowa, Central Division.

I, Edward R. Mason, clerk of said court, do hereby certify that the above and foregoing transcript contains full, true, and complete copies of all the pleadings, proceedings, and record entries in a certain cause, adjudicated in said court, wherein A. W. Woodward and others were plaintiffs and the Marshall Canning Co. and others were defendants, as full, true, and complete as the originals of the same now remain on file and of record in my office.

I further certify that the original citation, with the acceptance of service endorsed therein, is hereto attached and herewith returned.

In testimony whereof, I subscribe my name and affix the seal of said court, at the city of Des Moines in said district, this 3rd day of February, 1885.

[SEAL.] EDWARD R. MASON,
Clerk U. S. Circuit Court Southern District of Iowa, at Des Moines.

Endorsed on cover: S. Iowa C. C. U. S. No. 1268. Thurber, Whyland & Company, appellant, *vs.* A. W. Woodward and A. W. Langdon. Filed February 20, 1885.